

When recorded, return to:
Anthem Center, LLC
126 Segoe Lily Drive, Suite 275
Sandy, Utah 84070
Attn: Cory Gust

13361726
8/14/2020 2:17:00 PM \$40.00
Book - 10999 Pg - 2099-2109
RASHELLE HOBBS
Recorder, Salt Lake County, UT
MERIDIAN TITLE
BY: eCASH, DEPUTY - EF 11 P.

RESTRICTIVE/EXCLUSIVE USE AGREEMENT

THIS RESTRICTIVE/EXCLUSIVE USE AGREEMENT (this “**Agreement**”) is made and entered into as of this 3rd day of August, 2020, by and between ANTHEM CENTER, LLC, a Utah limited liability company (hereinafter “**Anthem Center**”), ANTHEM RETAIL 1, LLC, a Utah limited liability company (hereinafter “**Anthem Retail**”; and together with Anthem Center, individually and collectively, as the context may require, “**Anthem**”) and SAGE FAMILY INVESTMENTS, LLC, an Arizona limited liability company (hereinafter “**Sage**”) (each a “**Party**”, and collectively, the “**Parties**”).

RECITALS

A. Anthem Center is the owner of those certain parcels of real property located in Herriman City, Salt Lake County, Utah, more particularly described on **Exhibit “A-1”** attached hereto and incorporated herein by reference (the “**Anthem Center Property**”).

B. Anthem Retail is the owner of those certain parcels of real property located in Herriman City, Salt Lake County, Utah, more particularly described on **Exhibit “A-2”** attached hereto and incorporated herein by reference (the “**Anthem Retail Property**”; and together with the Anthem Center Property, individually and collectively, as the context may require, the “**Anthem Property**”).

C. Anthem Center intends to sell to Sage a portion of the Anthem Property which is more particularly described on **Exhibit “B”** attached hereto (the “**Sage Parcel**”).

D. In connection with such sale, Anthem and Sage have agreed to enter into this Agreement restricting certain uses on the Anthem Property and the Sage Parcel.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions set forth herein, it is mutually agreed as follows:

1. **Restriction on use.**

(a) So long as Sage has commenced the operation of a quick-serve, drive thru restaurant that sells Mexican food as its primary menu item (“**Sage’s Primary Use**”) within two (2) years of the date hereof, and so long as Sage has not ceased operating Sage’s Primary Use on the Sage Parcel for a period in excess of six (6) months (except for force majeure or a major building remodel, so long as Buyer has commenced and is diligently seeking to mitigate an event of force majeure and/or completing such remodel), no other drive thru restaurant on the Anthem Property will be permitted to sell Mexican food if the revenues from the sale of such Mexican

food exceed more than ten percent (10%) of such restaurant's gross annual revenue generated at the Anthem Property (the "**Sage Restricted Use**"). The Sage Restricted Use will not apply to: (a) any tenant, its successors, replacements or assigns in the Anthem Property with whom Anthem has an executed lease or purchase agreement as of December 11, 2019, (b) any shops or restaurants that do not have a drive thru or outside walk up window service, though such shops may have curbside delivery, including, without limitation, Costa Vida, Q-doba, Chipotle, or Café Rio, or (c) any tenant or occupant in the Anthem Property with over 4,500 square feet of space.

(b) So long as that certain lease between Anthem Center and Anthem Nails and Spa Inc., a Utah corporation, is in effect, no portion of the Sage Property may be used by any person or entity who primarily engages in the sale of, or specializing in the sale of, nail pedicures and manicures. For purposes hereof, "primarily engages" means a party receives more than twenty percent (20%) of its revenues from nail pedicures and manicures.

2. Enforcement.

Each Party hereto shall have the right to enforce by proceedings at law or in equity, all of the terms, provisions, covenants, conditions and restrictions of this Agreement, including the right to prevent the violation of any of the same and the right to recover damages or other amounts for such violation. Failure of any Party to enforce any term, provision, covenant, condition or restriction of this Agreement in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any future breach of the same or of any other term, provision, covenant, condition or restriction herein contained.

3. Miscellaneous.

a. Termination and Modification. This Agreement may be terminated or modified only by an instrument signed by the Parties, their respective successors or assigns, and recorded in the official records of the Salt Lake County Recorder.

b. Severability. If any term, provision, covenant, condition or restriction of this Agreement, or any application thereof, should be held by a court of competent jurisdiction to be invalid, void, or unenforceable, all terms, provisions, covenants, conditions and restrictions of this Agreement and all applications thereof not held invalid, void or unenforceable, shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

c. Captions and Headings. The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, provisions, covenants, conditions or restrictions contained herein.

d. Interpretation. Whenever the context requires in construing the provisions of this Agreement, the use of a gender shall include both genders, use of the singular shall include the plural, and use of the plural shall include the singular. The word "including" shall be construed inclusively, and not in limitation, whether or not the words "without limitation" or "but not limited to" (or words of similar import) are used with respect thereto. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

e. Governing Law. The laws of the State of Utah shall govern the validity, construction, performance and effect of this Agreement.

f. Attorneys' Fees and Costs. In the event any action or proceeding shall be instituted in connection with this Agreement, the losing Party(ies) shall pay to the prevailing Party(ies) a reasonable sum for attorneys' fees and costs incurred in bringing or defending such action or proceeding and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action or proceeding and shall be paid whether or not such action or proceeding is prosecuted to final judgment.

g. Rights of Successors and Assigns. The covenants, conditions, restrictions, benefits and obligations hereunder shall be perpetual and shall create mutual benefits and servitudes upon the Anthem Property and the Sage Parcel that run with the land. This Agreement shall bind and inure to the benefit of the Parties hereto and all parties having any right, title or interest in the Anthem Property or the Sage Parcel and their respective successors and assigns.

h. Mortgagee Protection Provision. The breach of any of the foregoing covenants, conditions and restrictions shall not defeat or render invalid the lien of any mortgage or deed of trust lien on the Anthem Property or the Sage Parcel that is made in good faith and for value; provided, however, that all of the covenants, conditions and restrictions contained herein shall be binding upon and effective against the party whose title thereto is acquired by foreclosure, trustee's sale or other foreclosure proceeding from and after the date of such foreclosure, trustee's sale or other foreclosure proceeding.

i. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and both of which together shall be deemed to constitute one and the same instrument and shall be effective upon execution of any one (1) or more of such counterparts by each of the Parties hereto and delivery of one (1) or more of such counterparts to the other Party.

[signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

SAGE FAMILY INVESTMENTS, LLC, an Arizona limited liability company

Krystal K. Burge

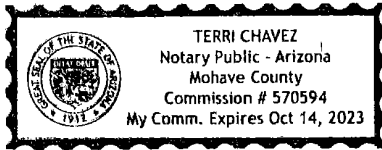
By: KRystal K. BURGE
Its: MANAGER/member

STATE OF Arizona)

: ss.

COUNTY OF Mohave)

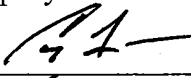
On this 12th day of August, 2020, personally appeared before me the undersigned, a Notary Public in and for the State of Arizona, Krystal K. Burge, the member, of SAGE FAMILY INVESTMENTS, LLC, an Arizona limited liability company, signer of the foregoing instrument, and acknowledged he/she executed the same on behalf of said company. Witness my hand and official seal.



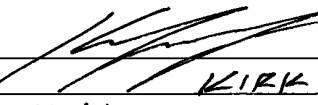
TERRI CHAVEZ
NOTARY PUBLIC

ANTHEM CENTER, LLC, a Utah limited liability company, by its managers

Arbor Commercial Real Estate L.L.C., a Utah limited liability company

By: 
Name: Cory Gust
Title: Manager

Anthem Commercial, LLC, a Utah limited liability company

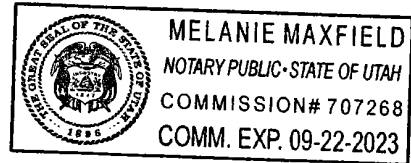
By: 
Name: KIRK YOUNG
Title: MANAGER.

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On this 12 day of August, 2020, personally appeared before me the undersigned, a Notary Public in and for the State of Utah, Cory Gust, manager (title) of ARBOR COMMERCIAL REAL ESTATE L.L.C., a Utah limited liability company, a manager of Anthem Center, LLC, a Utah limited liability company, signer of the foregoing instrument, and acknowledged he/she executed the same on behalf of said company. Witness my hand and official seal.



NOTARY PUBLIC

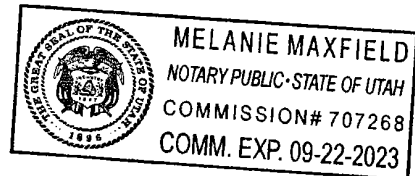


STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On this 12 day of August, 2020, personally appeared before me the undersigned, a Notary Public in and for the State of Utah, Kirk Young, Manager (title) of ANTHEM COMMERCIAL, LLC, a Utah limited liability company, a manager of Anthem Center, LLC, a Utah limited liability company, signer of the foregoing instrument, and acknowledged he/she executed the same on behalf of said company. Witness my hand and official seal.



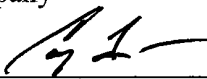
NOTARY PUBLIC



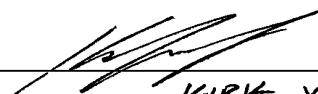
ANTHEM RETAIL 1, LLC, a Utah limited liability company, by its manager

Anthem Center, LLC, a Utah limited liability company, by its managers

Arbor Commercial Real Estate L.L.C., a Utah limited liability company

By: 
Name: Camy GUST
Title: MANAGER

Anthem Commercial, LLC, a Utah limited liability company

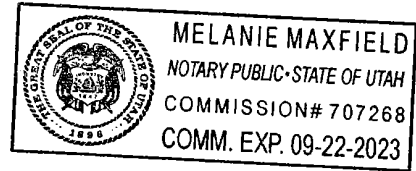
By: 
Name: KIRK YOUNG
Title: MANAGER

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

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NOTARY PUBLIC



STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

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NOTARY PUBLIC

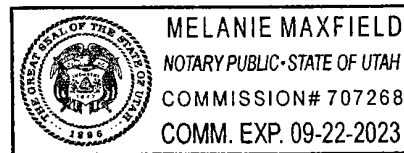


EXHIBIT "A-1"

Description of the Anthem Center Property

Lots 305, 306, 307, 309, and Parcel A, Anthem Commercial 3rd Amended Subdivision, amending Lots 2 through 5 of Anthem Commercial Subdivision, according to the plat thereof as recorded in the office of the Salt Lake County Recorder's Office.

Lots 404 and 405, Anthem Commercial 4th Amended Subdivision, amending Lots 302 and 308 of Anthem Commercial Subdivision, according to the plat thereof as recorded in the office of the Salt Lake County Recorder's Office.

Tax Parcel IDs: 26-25-178-004, 26-25-178-005, 26-25-178-006, 26-25-252-002, 26-25-202-001, 26-25-252-005, 26-25-252-004

EXHIBIT "A-2"

Description of the Anthem Retail Property

Lots 303 and 304, Anthem Commercial 3rd Amended Subdivision, Amendment Lots 2 thru 5 of Anthem Commercial Subdivision, according to the plat thereof as recorded in the office of the Salt Lake County Recorder.

Tax Parcel IDs: 26-25-128-003, 26-25-128-002

EXHIBIT "B"

Description of Sage Parcel

Lot 402, Anthem Commercial 4th Amended Subdivision, Amending Lots 302 and 308 of Anthem Commercial 3rd Amended Subdivision, according to the plat thereof as recorded in the office of the Salt Lake County Recorder.

Tax Parcel ID: 26-25-128-006